

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DEBORAH CONARY, §
§
Plaintiff, §
§
V. § CASE NO. 4:12cv582
§ Judge Clark/Judge Mazzant
MARTIN FOODS and BERGEN FOODS, §
§
Defendants. §

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On December 18, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Motion for Summary Judgment [Doc. #52] be granted [Doc. #56]. On January 2, 2014, Plaintiff filed objections [Doc. #58]. On January 7, 2014, Defendants filed a response [Doc. #59].

The Magistrate Judge recommended that Defendants' motion be granted. The Magistrate Judge found that Plaintiff failed to timely file a charge of discrimination required by Title VII. The Magistrate Judge also found that Plaintiff failed to make out a prima facie case of retaliation and also failed to offer any reasons or evidence of pretext. The Magistrate Judge also addressed Plaintiff's continued request for appointed counsel and found that there was no basis for appointing counsel.

Plaintiff filed objections to the report and recommendation, but the objections are not in

proper form. Plaintiff's narrative fails to specifically identify the portions of the findings and recommendations to which she objects, and also fails to set forth the basis for the objections. Plaintiff merely offers her view of the facts of the case. Because the objections are not specific or tied to any finding of the Magistrate Judge, the court overrules them.

In addition, Plaintiff again asserts that she needs an attorney to properly respond to the motion for summary judgment and the report and recommendation. The court recognizes that proceeding pro se in a case is not an easy path. However, in a civil case there is no right to appointed counsel, and the court is not inclined to appoint counsel that will not receive payment unless the case is successful. Plaintiff has always been free to obtain counsel, and the fact that she was not able may be reflective of the possible lack of merits to her claim. Although the court will re-examine the appointment of counsel in cases where the pro se plaintiff gets past a motion for summary judgment, in this case, Plaintiff has failed to present a material fact issue in dispute. In addition, a review of the record indicates that the Magistrate Judge has been very lenient to Plaintiff in deciding the motions to dismiss, including the concerns whether Plaintiff exhausted her administrative remedies. The court does not represent Plaintiff, and she is required to comply with the Rules of Civil Procedure and the court's Local Rules. Plaintiff has failed to comply with the rules.

A review of the report and recommendation illustrates that Plaintiff failed to timely file her charge of discrimination and Plaintiff offered no evidence to the contrary. She also fails to object to this finding. As for her retaliation claim, Plaintiff has offered no evidence that she engaged in protected activity. Even if her supervisor was a bully, Plaintiff offered no evidence that she mentioned that she felt the supervisor was treating her or any other employee unfairly

due to his or her race, color, sex, religion, or national origin. Plaintiff has also failed to offer any evidence to show that the reason for her termination was pretext. Plaintiff offered no evidence in response to the motion that was considered by the Magistrate Judge. To the extent that Plaintiff's objections can be considered objections, they are overruled.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by Plaintiff [Doc. #58], as well as Defendants' response [Doc. #59], this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the court.

It is, therefore, **ORDERED** that Defendants' Motion for Summary Judgment [Doc. #52] is **GRANTED** and Plaintiff's case is **DISMISSED** with prejudice.

So **ORDERED** and **SIGNED** this **22** day of **January, 2014**.



Ron Clark, United States District Judge